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of the State of California
2 ALAN A. MANGELS,
Deputy Attorney General
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4 Telephone: (213) 736-2026

5 Attorneys for Complainant
6
7

8 BEFORE THE
BOARD OF ACCOUNTANCY
9 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
10

11 In the Matter of the Accusation)	NO. 537
12 Against:)	
)	
13 KENNETH NELSON CRAIG,)	STIPULATION
31822 Village Circle Road, #102)	IN SETTLEMENT
14 Westlake Village, CA 91361)	
)	
15 Certificate No. 21188E,)	
)	
16 Respondent.)	

17 IT IS HEREBY STIPULATED and admitted by and between the
18 parties to this matter, Della Bousquet, complainant, and
19 Kenneth Nelson Craig, respondent, that the following is true:

20 1. Complainant is the Executive Officer of the Board
21 of Accountancy (hereinafter referred to as the "board"), and in
22 her official capacity as Executive Officer is empowered to
23 bring an accusation for discipline against a certificate holder
24 of the board.

25 2. Complainant is represented in this matter by
26 John K. Van de Kamp, Attorney General of the State of
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1.

1 California, by and through Alan A. Mangels, Deputy Attorney
2 General.

3 3. Respondent is Kenneth Nelson Craig, a certified
4 public accountant. Respondent is representing himself in this
5 matter.

6 4. On or about March 14, 1975, respondent was issued
7 certificate number 21188E to practice as a certified public
8 accountant. Said certificate was renewed effective March 15,
9 1986 and remains in full force and effect.

10 5. On August 5, 1987, complainant filed accusation
11 number 537 against respondent; said accusation is attached
12 hereto and made a part hereof as its set forth in full at this
13 point.

14 6. Complainant and respondent are desirous of
15 resolving this matter without a hearing or further
16 administrative proceedings.

17 7. Respondent understands the nature of the
18 accusation filed against him and understands he could have the
19 assistance of counsel, at his expense, and that by entering
20 into the stipulation he gives up his right to the assistance of
21 counsel in this matter.

22 8. Respondent understands that he could have a
23 hearing before the board to determine the sufficiency and the
24 truth of the accusation, and the propriety of any penalty to be
25 imposed by the board, and that by entering into this
26 stipulation he gives up his right to a hearing before the board

27 /

1 and his right to present legal and factual issues to the board
2 for its consideration.

3 9. Respondent understands that he could use
4 compulsory process to procure witnesses and documentary
5 evidence on his behalf and in mitigation, and that by entering
6 into this stipulation he gives up his right to compulsory
7 process.

8 10. Respondent understands that he could introduce
9 relevant testimony and exhibits on his behalf and in
10 mitigation, including exculpatory evidence, and could rebut the
11 evidence against him, and that by entering into the stipulation
12 he gives up his right to call witnesses or introduce evidence
13 on his behalf or in mitigation, and to rebut the evidence
14 against him.

15 11. Respondent understands that no hearing will be
16 held and no witnesses will be called and examined before the
17 board, no evidence or documents will be introduced, and that by
18 entering into this stipulation he gives up his right to a
19 hearing and to confront and cross-examine any and all witnesses
20 against him.

21 12. Respondent understands by entering into this
22 stipulation he gives up his right to appeal to the courts of
23 the State of California and to all rights of appeal to the
24 board on this accusation number 537.

25 13. Respondent has not been forced, coerced,
26 threatened, or induced in any way into entering into this
27 stipulation.

1 14. Respondent admits to the truth of allegations
2 contained in paragraphs 1, 2, 5 and 6 of accusation number 537.

3 15. It is further stipulated and agreed that cause
4 for disciplinary action against respondent has been established
5 pursuant to section 5100 of the Business and Professions Code
6 by reason of violation of Business and Professions section
7 5100, subdivision (c), and 5100, subdivision (f), in
8 conjunction with rule 60 of Title 16 of the California Code of
9 Regulations as well as Business and Professions section 5100,
10 subdivision (a), and 5100, subdivision (e), in conjunction with
11 Business and Professions Code sections 5120 and 5050.

12 16. In the event the board does not except this
13 stipulation, it is revoked by the parties and will become null
14 and void and without any effect whatsoever.

15 17. Accordingly, the board may issue the following
16 order:

17 Certificate number 21188E, heretofore issued to
18 respondent Kenneth Nelson Craig, is hereby revoked; however,
19 said revocation is hereby stayed and the respondent is placed
20 on probation for a period of five years as follows:

21 A. Respondent shall obey all federal, California,
22 other states and local laws including those rules relating
23 to the practice of public accountancy in California.

24 B. Respondent's certificate to practice shall be
25 suspended for a period of 90 days during which time
26 respondent shall engage in no activities for which
27

1 certification as a Certified Public Accountant or Public
2 Accountant is required.

3 C. Commencing and payable upon the effective date
4 of this decision, respondent shall pay restitution to
5 Gordon Thomas the amount of \$36,000.00 in equal monthly
6 installments of \$3,000.00; shall pay to William Eubank the
7 amount of \$27,000.00 in equal monthly installments of
8 \$2,250.00; and shall further pay to Edward Ruth the amount
9 of \$18,000.00 in equal monthly installment of \$1,500.00.
10 The total amount of all restitution to these three
11 individuals shall be fully paid within the first year of
12 probation. The failure to pay any monthly payment within
13 five days of the due date, or to pay the entire sum due by
14 the end of the first year of probation, or the discharge of
15 this obligation in bankruptcy court shall be deemed a
16 violation of this condition of probation and grounds for the
17 termination of the stay and the reimposition of the order of
18 revocation. Upon full and complete payment of restitution
19 to each of the said named individuals, respondent shall
20 provide the board with a written release from them, each
21 attesting, that full restitution of the stated individual
22 amount has been paid.

23 D. Respondent shall be enjoined from entering into
24 financial dealing with clients other than those dealing with
25 fee arrangements.

26 E. Respondent shall take and pass a board approved
27 ethics examination within the first year of probation.

1 F. Respondent shall complete 50 units of professional
2 education courses within the first year of probation.
3 These professional education courses shall be in addition to
4 the CPE requirements for relicensing.

5 G. During the period of probation, if the respondent
6 undertakes an examination, review or compilation engagement,
7 the resultant financial statements and all related working
8 papers related to one sample of each of the above categories
9 must be submitted to and reviewed by the administrative
10 committee or their designated agent for compliance with
11 current professional financial reporting standards of the
12 board as set forth in the California Code of Regulations,
13 Title 16, Chapter 1, sections 58-58.3 before release of
14 thereof.

15 If the financial statements do not comply with the
16 provisions of the California Code of Regulations, Title 16,
17 Chapter 1, sections 58-58.3, then respondent must make all
18 necessary corrections or withdraw from the engagement
19 without issuing a report.

20 H. During the period of probation, respondent shall
21 engage in no activity which require receiving or disbursing
22 funds for or on behalf of other person, company,
23 partnership, association, corporation or other business
24 entity.

25 I. Respondent shall reimburse the board the amount of
26 \$2500.00 for investigation and prosecution costs within 90
27 days of the effective date of this decision.

1 J. Respondent shall submit quarterly written reports
2 to the board on a form provided by the board.

3 K. Respondent shall comply with all citations.

4 L. Respondent shall make personal appearances and
5 report to the Administrative Committee at the board's
6 notification, provided such notification is accomplished in
7 a timely manner.

8 M. Respondent shall cooperate fully with the Board of
9 Accountancy, and any of its agents or employees in their
10 supervision and investigation of his compliance with the
11 terms and conditions of this probation including the board's
12 Probation Surveillance Compliance Program.

13 N. In the event respondent should leave California to
14 reside or practice outside the state, respondent must notify
15 the board in writing of the dates of departure and return.
16 Periods of residency or practice outside the state shall not
17 apply to the reduction of probationary period.

18 O. If respondent violates probation in any respect,
19 the board, after giving respondent notice and an opportunity
20 to be heard, may revoke probation and reimpose the order of
21 revocation. If an accusation or petition to revoke
22 probation is filed against respondent during the period of
23 probation, the board shall have continuing jurisdiction
24 until the matter is final, and the period of probation shall
25 also be extended until the matter is final.

26 /

27 /

7.

1 P. Respondent shall be subject to, and shall permit,
2 a general review of the respondent's professional practice.
3 Such review shall be conducted by representatives of the
4 board whenever designated by the Administrative Committee,
5 provided notification of such is accomplished in a timely
6 manner.

7 JOHN K. VAN DE KAMP, Attorney General
8 of the State of California
9 ALAN A. MANGELS,
Deputy Attorney General

10 August 24, 1988
11 DATED)

By:

Alan A. Mangels
12 ALAN A. MANGELS
13 Deputy Attorney General

Attorneys for Complainant

14 I have read the stipulation and order and I understand
15 its contents and legal effects. I freely and voluntarily sign
16 this stipulation and agree to its terms with the full
17 knowledge that my certificate to practice in California will be
18 revoked but that the revocation will be stayed and I will be
19 placed on probation upon various terms and conditions, all of
20 which I shall comply with during the period of probation.

21
22 8-26-88
23 DATED

Kenneth Nelson Craig
24 KENNETH NELSON CRAIG
25 Respondent

Certificate No. 21188E

26 03541110-LA86AD1393
27 CRAIG.ACC

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ACCEPTANCE

The attached stipulation is accepted by the Board of Accountancy and shall constitute its decision and order in this matter.

The decision and order shall become effective on
November 8, 1988.

IT IS SO ORDERED November 8, 1988.

BOARD OF ACCOUNTANCY
State of California

By

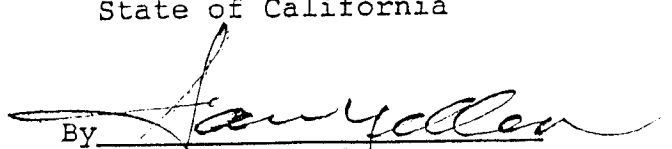

Sam Yellen,
Board President

EXHIBIT "A"

1 JOHN K. VAN DE KAMP, Attorney General
2 of the State of California
3 ALAN A. MANGELS,
4 Deputy Attorney General
5 3580 Wilshire Boulevard
6 Los Angeles, California 90010
7 Telephone: (213) 736-2026

8 Attorneys for Complainant

9 BEFORE THE
10 BOARD OF ACCOUNTANCY
11 DEPARTMENT OF CONSUMER AFFAIRS
12 STATE OF CALIFORNIA

13 In the Matter of the Accusation) No. 537
14 Against:)
15 KENNETH NELSON CRAIG) ACCUSATION
16 31822 Village Circle Rd., #102)
17 Westlake Village, CA 91361)
18 Certificate No. 21188E,)
19 Respondent.)
20)
21)
22)
23)
24)
25)
26)
27)

28 Complainant Della Bousquet, as cause for
29 disciplinary action, charges and alleges as follows:

30 1. Complainant Della Bousquet makes and files this
31 accusation solely in her official capacity as Executive
32 Officer of the Board of Accountancy (hereinafter the
33 "board"), Department of Consumer Affairs, State of
34 California.

35 2. On or about March 14, 1975, Kenneth Nelson
36 Craig (hereinafter "respondent") was issued certificate
37 number 21188E (Certified Public Accountant). This
38 certificate expired on or about August 1, 1981, by reason of

1 non-payment of the renewal fee and lack of compliance with
2 continuing education regulations. Said certificate was
3 renewed effective March 15, 1986, and remains in full force
4 and effect.

5 3. Pursuant to Business and Professions Code
6 section 5100 (herein all references shall be to the Business
7 and Professions Code unless otherwise noted), the board may
8 revoke, suspend or refuse to renew any permit or certificate
9 by reason of any of the following causes: (a) section 5100,
10 subdivision (a), the conviction of any crimes substantially
11 related to the qualifications, functions, and duties of a
12 certified public accountant; (b) section 5100,
13 subdivision (c), dishonesty, fraud, or gross negligence in
14 the practice of public accountancy; (c) section 5100,
15 subdivision (e), violation of any of the provisions of
16 section 5120, said section making it a misdemeanor to violate
17 section 5050 by reason of engaging in the practice of public
18 accountancy in the State of California without a valid permit
19 to practice public accountancy issued by the board; (d)
20 section 5100, subdivision (f), willful violation of a rule or
21 regulation promulgated by the board under the authority
22 granted by the Accountancy Act.

23 4. Rule 60 of title 16 of the California
24 Administrative Code, a rule promulgated by the board,
25 provides that a licensee shall not engage in conduct which
26 constitutes fiscal dishonesty or breach of fiduciary
27 responsibility of any kind.

1 5. Respondent is subject to disciplinary action
2 pursuant to section 5100 by reason of his violation of
3 section 5100, subdivision (c) and section 5100,
4 subdivision (f) in conjunction with rule 60 of title 16 of
5 the California Administrative Code as follows:

6 A. During the year 1981, respondent solicited and
7 obtained funds for a computer hardware limited
8 partnership to be known as Executive Research, Ltd.
9 Respondent was the general partner of said partnership.

10 B. Funds for said partnership were solicited by
11 the respondent from his clients in his business as a
12 certified public accountant. These clients were told by
13 respondent that they needed a tax shelter and that
14 respondent's limited partnership would so qualify. In
15 the case of respondent's client, G. Thomas, the
16 potential tax liabilities were greatly exaggerated.
17 And, in truth and in fact, said partnership of
18 respondent did not qualify and respondent's clients
19 suffered additional tax liabilities because of
20 respondent's actions.

21 C. The limited partnership agreement, when
22 recorded in late November 1982 by respondent, contained
23 alterations to the papers signed by the respondent's
24 clients/limited partners which changed the purpose,
25 scope, and capitalization of the partnership. All of
26 these changes were made without permission or knowledge
27 of the clients/limited partners.

1 D. Respondent failed to comply with his fiduciary
2 duties involving said limited partnership and further
3 failed to fully disclose negative aspects of the
4 business of the partnership prior to the receipt of any
5 funds from his clients/limited partners. Additionally,
6 no proper accounting was ever made to the
7 clients/limited partners even after the IRS assessments,
8 subsequent to an IRS audit, and demand for a proper
9 accounting by the client/limited partners. Said
10 partnership through the activities of the respondent
11 also entered into agreements with other corporations
12 personally owned by respondent and almost the entire
13 amount of funds so received from respondent's
14 clients/limited partners were paid to respondent's
15 corporate entities prior to the recording of the limited
16 partnership agreement and prior to the filing of
17 personal bankruptcy by the respondent.

18 6. Respondent's license is further subject to
19 disciplinary action pursuant to section 5100 by reason of
20 violation of section 5100, subdivision (a) and 5100,
21 subdivision (e) in conjunction with section 5120 and 5050 as
22 follows:

23 A. In violation of section 5050 respondent
24 continued to practice as a certified public accountant
25 through March 15, 1986, when his license had expired on
26 or about August 1, 1981.

27 /


1 B. In violation of section 5100, subdivision (a),
2 respondent was convicted, following his plea of guilty,
3 in case number CC09063, entitled, "People v. Kenneth
4 Nelson Craig," in the Municipal Court of the Malibu
5 Judicial District, County of Los Angeles, State of
6 California, of a misdemeanor violation of section 5050
7 of the Business and Professions Code.

8 WHEREFORE, complainant prays that the board hold a
9 hearing on the matters alleged herein and issue a decision:

10 1. Suspending or revoking license number 21188E
11 previously issued to respondent; and

12 2. Taking such other further relief as the board
13 deems proper.

14 Dated: August 5, 1987

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17 
18 DELLA BOUSQUET
19 Executive Officer
20 Board of Accountancy
21 State of California

22 Complainant

23
24
25
26
27 (Craig)

BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the First
Amended Accusation and First
Amended Petition to Revoke
Probation Against:

KENNETH NELSON CRAIG
P.O. Box 6697
Incline Village, Nevada 89450

Certified Public Accountant
Certificate No. 21188,

Respondent.

No. D1-86-537

OAH No. L-59375

DECISION

The attached Proposed Decision of the Administrative Law
Judge is hereby adopted by the Board of Accountancy as its Decision in
the above-entitled matter.

This Decision shall become effective on June 17, 1996.

IT IS SO ORDERED

May 17, 1996

Robert J. Smith

- A. At page 9, line 19: substitute "21 - 26, 28, 29.g, 32 - 35" for "21 - 35".
- B. At page 12, line 15: substitute "paragraph 18" for "paragraphs".
- C. At page 17, line 18: substitute "H" for "G."
- D. At page 17: delete paragraph 27.
- E. At page 20, line 5: substitute "with reference to applicable" for "in conjunction with applicable".
- F. At page 20, line 7: insert a comma after "1984".

- G. At page 20, line 11: substitute "with reference to applicable" for "in conjunction with applicable".
- H. At page 20, line 13: insert a comma after "1984".
- I. At page 21, line 21: substitute "with reference to applicable" for "in conjunction with applicable".

Complainant's motion to amend as aforesaid was granted by the Administrative Law Judge.

Evidence was received and the matter submitted on March 29, 1996.

FINDINGS OF FACT

Procedural Findings

I

Complainant, Carol Sigmann, as Executive Officer of the California Board of Accountancy (hereinafter "Board"), made and filed an Accusation and Petition to Revoke Probation on January 18, 1993, in her official capacity.

II

On January 22, 1993, Complainant, through counsel, Michael Tanaka, Deputy Attorney General, filed a Request to Set the matter for hearing with the Office of Administrative Hearings.

III

On February 1, 1993, Respondent, through counsel, filed a Notice of Defense.

IV

On February 18, 1993, the Honorable Janis S. Rovner, Administrative Law Judge, ordered the matter set for trial on July 12, 1993, through and including July 16, 1993.

V

On July 1, 1993, Mr. Tanaka requested a continuance of the hearing as set to commence July 12, 1993, because the Board's expert witness, leaving Board employment, would not be available to testify on the dates referenced in Finding No. IV. Respondent had no objection to the continuance of the hearing.

VI

On July 9, 1993, the Honorable Janis S. Rovner, Administrative Law Judge, granted the request of Complainant as referenced in Finding No. V and ordered the matter set for trial on October 18 - 22, 1993.

VII

On October 1, 1993, Mr. Tanaka notified Presiding Administrative Law Judge Ralph B. Dash that the matter had settled and requested that the hearing referenced in Finding No. VI be vacated. The request to vacate the hearing was granted by Judge Dash.

VIII

On September 23, 1994, Mr. Tanaka filed a Request to Set the matter for hearing with the Office of Administrative Hearings.

IX

On October 6, 1994, the Honorable Carolyn Richardson Owens, Administrative Law Judge, ordered the matter set for trial on March 21, 1995, through and including March 25, 1995.

X

On March 20, 1995, Respondent requested a continuance of the hearing as a result of an acute dental infection. The request was granted and the matter taken off calendar by Presiding Administrative Law Judge Paul M. Hogan.

XI

On June 26, 1995, the Honorable Vincent Nafarrete, Administrative Law Judge, ordered the matter set for trial in Sacramento, California, on September 11 - 15, 1995.

XII

On August 4, 1995, Jeanne Collette Werner, Deputy Attorney General, was assigned to handle the matter upon the departure of Michael Tanaka, Deputy Attorney General, from the Office of the Attorney General.

XIII

On August 24, 1995, Ms. Werner, on behalf of Complainant, Carol Sigmann, as Executive Officer of the California Board of Accountancy (hereinafter "Board"), made and filed an a First

Amended Accusation and First Amended Petition to Revoke Probation,
in her official capacity.

XIV

On September 11, 1995, Ms. Werner, compelled to undergo an emergency root canal, requested a continuance of the hearing. The matter was thereafter set for March 25 - 29, 1996.

Jurisdictional Findings

XV

On March 14, 1975, the Board issued Certificate No. CPA 21188 (Certified Public Accountant) to Respondent.

- A. On August 1, 1981, Respondent's certificate expired and was not valid during the period between August 1, 1981 and March 14, 1986, for the following reasons:
1. Respondent's renewal fee had not been paid.
 2. Respondent's declaration of compliance with continuing education regulations had not been submitted.
- B. On March 15, 1986, Respondent having submitted renewal fees and evidence of compliance with continuing education regulations, his certificate was renewed.
- C. On August 1, 1991, Respondent's certificate expired and was not valid during the period between August 1, 1991 and December 7, 1992, for submission of a certificate renewal application without the required declaration of compliance with continuing education regulations.
- D. On December 7, 1992, Respondent's certificate was renewed upon receipt by the Board of the signed declaration attesting to compliance with continuing education regulations.
- E. On August 1, 1993, Respondent's certificate expired and was not valid during the period between August 1, 1993 and August 24, 1993, for the reasons set forth in Finding Nos. XV.A.1 - XV.A.2.
- F. On August 25, 1993, Respondent having submitted renewal fees and evidence of compliance with

continuing education regulations, his certificate was renewed.

- G. On August 1, 1995, Respondent's certificate expired and was not valid during the period between August 1, 1995 and August 29, 1995, for the reasons set forth in Finding Nos. XV.A.1 - XV.A.2 and X.E.
- H. On August 30, 1995, Respondent having submitted renewal fees and evidence of compliance with continuing education regulations, his certificate was renewed through and including July 31, 1997.

XVI

All jurisdictional requirements have been met.

Factual Findings

Drake Matter

XVII

Respondent, in 1985, was retained by John Drake (hereinafter "Drake") to prepare his federal and state income tax returns for the 1984 tax year. Respondent, incident to his undertaking of Drake's returns, received and retained various business and tax records relating to Drake.

XVIII

The Internal Revenue Service (hereinafter "the IRS"), in 1986, notified Drake of an audit of his claimed business expense deductions on the 1984 federal return prepared by Respondent and executed by Drake.

XIX

Drake, in 1986, notified Respondent of the action being undertaken by the IRS and was assured by Respondent that he would handle the matter.

XX

On November 28, 1986, Respondent, apologizing for having delayed in attending to the audit, assured Drake that he would attend to the matter and requested Drake's execution of a Power of Attorney (IRS Form 2848). In addition, Respondent requested that Drake provide additional documentation relating to his business expenses (e.g., 1984 appointment calendar, entertainment tickets, new car invoice, summary of auto interest expense, and all auto expenses).

XXI

Drake executed and returned the Power of Attorney to Respondent but failed to provide the requested documentation to Respondent as referenced in Finding No. XX.

XXII

Notwithstanding receipt of the Power of Attorney as referenced in Finding Nos. XX - XXI, Respondent, having postponed a meeting with the IRS on behalf of Drake, undertook no further action with respect to the audit referenced in Finding No. XVIII. The Power of Attorney was not submitted by Respondent to the IRS.

XXIII

Because the business expenses were not established (Finding No. XXII), the IRS, on April 21, 1987, disallowed all business expenses for Drake and assessed an additional tax of \$3,176.00.

XXIV

On April 23, 1987, Drake notified Respondent of the IRS action as referenced in Finding No. XXIII. Respondent allayed Drake's concerns about the audit and its assessment.

XXV

On December 7, 1987, the IRS issued a Notice of Deficiency. Drake notified Respondent.

XXVI

In 1988, Drake requested Respondent to prepare his federal and state income tax returns for the 1987 tax year.

XXVII

Respondent, not having undertaken any further action with respect to the audit referenced in Finding No. XVIII, on May 30, 1988, the IRS assessed the tax as referenced in Finding No. XXIII and interest in the sum of \$1,170.30 for a total liability of \$4,346.30.

XXVIII

Despite being requested to prepare Drake's returns as referenced in Finding No. XXVI, Respondent failed to file extensions or prepare any returns on behalf of Drake.

XXIX

On July 20, 1988, Respondent wrote to his clients, including Drake, the following:

"Having shortchanged myself and family of vacations over the last few years I have decided to move my residence and business to a prime vacation spot allowing me to surf, fish, swim, sunbathe and pursue any other escapist activities for which I feel a need. This I will do 50 weeks out of the year and visit smog and freeways the other two weeks, thus selfishly reversing the human tendency.

"Seriously, I am working on some fabulous business opportunities in Hawaii and will be living on the Island of Molokai for a couple of years to escort these opportunities to completion (success or disaster). During this period of time I want and need to maintain the business relationship we have enjoyed and would appreciate your considering my observations on this matter.

"I will have an office on Molokai with a toll free phone number and a fax machine to make communication as simple as possible. I will be maintaining my license and a business address in California and will be returning to the mainland as often as needed to provide services you may require...."

Respondent, thereafter packing his household furniture and furnishing, office equipment and files, transported himself and his family, comprised of his wife and seven children, to Hawaii.

XXX

On August 1, 1988, Drake, believing that his matters (Finding Nos. XVIII and XXVI) were being handled by Respondent, inquired as to case progress.

XXXI

On August 24, 1988, Drake, having received no response to his inquiry as referenced in Finding No. XXX or telephone calls, terminated his professional relationship with Respondent and requested receipt of his materials.

XXXII

Respondent, despite the request of Drake, has never returned Drake's materials to him.

DiLucca Matter

XXXIII

In 1988, Lisa L. DiLucca (hereinafter "DiLucca") retained Respondent to prepare her 1987 federal tax return.

XXXIV

In April 1988, DiLucca executed and filed the return (Finding No. XXXIII) prepared by Respondent.

XXXV

On July 10, 1989, DiLucca's return (Finding Nos. XXXIII - XXXIV) was selected for audit relative to her claims for Schedule C auto expenses, depreciation, rent expense, and travel, entertainment, meals and lodging expenses.

XXXVI

DiLucca, having received a copy of the letter as referenced in Finding No. XXIX, contacted Respondent to obtain his assistance. Respondent assured her that he would handle the matter for her and advised her not to have independent contact with her.

XXXVII

Having executed a Power of Attorney (Form 2848), DiLucca entrusted the matter (Finding No. XXXVI) to Respondent.

XXXVIII

In August 1989, Respondent informed DiLucca that the audit, scheduled for October 26, 1989, would be handled by him. He requested supporting documentation from her. DiLucca forwarded such documentation to Respondent.

XXXIX

Respondent, never having provided the Power of Attorney or a copy thereof to the IRS despite its execution as referenced in Finding No. XXXVII, failed to appear at the audit as referenced in Finding No. XXXVIII.

XL

As a result of Respondent's conduct as referenced in Finding No. XXXIX, the IRS disallowed DiLucca's deductions, assessed a tax, penalties and insurance. DiLucca, terminating her professional relationship with Respondent on November 29, 1989, was subsequently required to obtain other representation to resolve the matter with the IRS.

Probation Compliance

XLI

On November 8, 1988, in a Board proceeding entitled In the Matter of the Accusation Against: Kenneth Nelson Craig, Case No. 537, Respondent's certificate as referenced in Finding No. XV was disciplined by the Board. The discipline imposed on Respondent's certificate, pursuant to stipulation, was revocation, stayed and placed on probation for five years on various terms and conditions, including, inter alia, the following:

- A. "A. Respondent shall obey all federal, California, other state and local laws including those rules relating to the practice of public accountancy in California.
- B. "B. Respondent's certificate to practice shall be suspended for a period of 90 days during which time respondent shall engage in no activities for which certification as a Certified Public Accountant or Public Accountant is required.
- C. "C. Commencing and payable upon the effective date of this decision, respondent shall pay restitution....
- D. "G. During the period of probation, if the respondent undertakes an examination, review or compilation engagement, the resultant financial statements and all related working papers related to one sample of each of the above categories must be submitted to and reviewed by the administrative committee or their designated agent for compliance with current professional financial reporting standards...before release of (sic) thereof.

"If the financial statements do not comply with the provisions of the California Code of Regulations, Title 16, Chapter 1, sections 58 - 58.3, then respondent must make all necessary corrections or withdraw from the engagement without issuing a report.

- E. "J. Respondent shall submit quarterly reports on a form provided by the Board.
- F. "N. In the event respondent should leave California to reside or practice outside the state, respondent must notify the board in writing of the dates of departure and return. Periods of residency or practice outside the state shall not apply to the reduction of probationary (sic) period.
- G. "O. If respondent violates probation in any respect, the board, after giving respondent notice and an opportunity to be heard, may revoke probation and reimpose the order of revocation. If an accusation or petition to revoke probation is filed against respondent during the period of probation, the board shall have continuing jurisdiction until the matter is final, and the period of probation shall also be extended until the matter is final."

Probation Compliance - Quarterly Reports

XLII

Consistent with Paragraph J of Respondent's terms and conditions of his probation (Finding No. XLI.E), Respondent executed under penalty of perjury and submitted to the Board a Probationer's Quarterly Written Report of Compliance (hereinafter "Quarterly Report"). Each Quarterly Report provided a space for Respondent's home and business addresses and, inter alia, asked: "Since the effective date of the order of the Board placing you on probation, have you:

- A. "(a) violated, been arrested, charged, or convicted of federal or state statute, county or city ordinance (do not show minor traffic violations):
- B. "(b) complied with all the laws and Board regulations pertaining to the practice of accounting:
- C. "(c) complied with each and every condition of the terms of probation:"

XLIII

On January 3, 1989, Respondent executed under penalty of perjury and submitted to the Board his first Quarterly Report for the period of November 8, 1988 through December 31, 1988. Respondent, having relocated as referenced in Finding No. XXIX, reported his addresses (Finding No. XLII) as: 108 Ojai, Oxnard,

California, 93035. Respondent, answered the questions set forth in Finding Nos. XLII.A - XLII.C, respectively, as follows:

- A. "No."
- B. "Yes."
- C. "Yes."

XLIV

On April 3, 1989, Respondent submitted an executed Quarterly Report for the first quarter of 1989 and, residing in Hawaii as referenced in Finding No. XXIX, reported his addresses (Finding No. XLII) as set forth in Finding No. XLIII and responded to the questions set forth in Finding No. XLII.A - XLII.B as set forth in Finding Nos. XLIII.A - XLIII.B, respectively. To the question set forth in Finding No. XLII.C, Respondent replied, "No" and acknowledged that he was delinquent in payments.

XLV

Respondent, residing in Hawaii as referenced in Finding No. XXIX, reported the addresses (Finding No. XLII) as referenced in Finding No. XLIII, submitted the following executed Quarterly Reports and responded to the questions set forth in Finding Nos. XLII.A - XLII.C as set forth in Finding Nos. XLIII.A - XLIII.C, respectively:

<u>Time Period</u>	<u>Date Executed</u>
A. Apr. 1, 1989 - June 30, 1989	July 12, 1989
B. July 1, 1989 - Sept. 30, 1989	September 29, 1989
C. Oct. 1, 1989 - Dec. 31, 1989	January 2, 1990
D. Jan. 1, 1990 - Mar. 31, 1990	April 1, 1990
E. Apr. 1, 1990 - June 30, 1989	July 1, 1990
F. July 1, 1990 - Sept. 30, 1990	October 1, 1990

XLVI

Respondent, residing in Hawaii as referenced in Finding No. XXIX and reporting a residential and business address at 2622 Victoria, Port Hueneme, California 93041, submitted the following executed Quarterly Reports and responded to the questions set forth in Finding Nos. XLII.A - XLII.C as set forth in Finding Nos. XLIII.A - XLIII.C, respectively:

<u>Time Period</u>	<u>Date Executed</u>
A. Oct. 1, 1990 - Dec. 31, 1990	January 3, 1991
B. Jan. 1, 1991 - Mar. 31, 1991	April 2, 1991
C. Apr. 1, 1991 - June 30, 1991	July 2, 1991
D. July 1, 1991 - Sept. 30, 1991	October 1, 1991
E. Oct. 1, 1991 - Dec. 31, 1991	January 6, 1992
F. Jan. 1, 1992 - Mar. 31, 1992	April 4, 1992
G. Apr. 1, 1992 - June 30, 1992	June 7, 1992
H. July 1, 1992 - Sept. 30, 1992	October 1, 1992
I. Oct. 1, 1992 - Dec. 31, 1992	January 4, 1993
J. Jan. 1, 1993 - Mar. 31, 1993	April 4, 1993
K. Apr. 1, 1993 - June 30, 1993	July 7, 1993
L. July 1, 1993 - Sept. 30, 1993	October 6, 1993

Probation Compliance - Committee Appearances

XLVII

On September 14, 1989, Respondent appeared before the Board's Administrative Committee (hereinafter "the Committee") for his first annual probation appearance. Respondent acknowledged compliance with the terms and conditions of his probation, expressed some confusion regarding his proper residency and was counseled by the Committee in reference to the reports referenced in Finding Nos. XLV.A - XLV.B) to submit his Quarterly Reports within ten days of the end of each quarter.

XLVIII

On November 15, 1990, Respondent appeared before the Committee for his second annual probation appearance. Respondent, submitting a business card with an address in Hawaii and an address in California, acknowledged spending most of his time in Hawaii and 25% of his time in California. Respondent further acknowledged to the Committee that while he conducts accountancy activities in California, he lacks a California business office. Respondent apologized for submitting tardy Quarterly Reports.

XLIX

On July 19, 1991, Respondent appeared before the Committee for his third annual probation appearance. Respondent, providing his address as set forth in Finding No. XLVII, submitted a business card with a Hawaii post office box address and acknowledged, inter alia, residing in Hawaii for the past three years and spending approximately 75% of his time in Hawaii and 25% of his time in California.

Probation Compliance - Obey All Laws

L

Upon locating to Hawaii as referenced in Finding No. XXIX, Respondent obtained telephone services. Installation of an "800" line for his California clientele allowed him to obtain a complimentary listing in the Hawaii GTE telephone directory. Asked by a Hawaiian telephone business representative the nature of his business, Respondent replied that he was a CPA. Letterhead prepared and used by Respondent in 1989, read as follows:

Kenneth N. Craig CPA
P.O. Box #8
Kualapuu, HI 96757

LI

The 1989 - 1990 GTE Hawaiian Telephone Yellow Pages for the Islands of Maui, Molokai and Lanai listed Respondent's name under the heading "Accountants - Certified Public" as follows:

"Craig Kenneth Kualapuu Molokai 567-6007"

LII

On July 25, 1989, the Hawaiian Regulated Industries Complaints Office, Department of Commerce and Consumer Affairs, advised Respondent to refrain from advertising as a certified public accountant until he became licensed in Hawaii.

LIII

The 1990 - 1991 GTE Hawaiian Telephone Yellow Pages for the Islands of Maui, Molokai and Lanai listed Respondent's name under the heading "Accountants - Certified Public" as set forth in Finding No. LI.

LIV

On June 12, 1990, Robert A. Alm, in his capacity as Director of the Hawaii Department of Commerce and Consumer Affairs,

filed a civil complaint for injunctive relief against Respondent for the conduct referenced in Finding Nos. LI and LIII in the Circuit Court of the Second District, State of Hawaii, in a matter entitled State of Hawaii vs. Kenneth N. Craig, Case No. 90-0332(3).

LV

On December 21, 1990, the court referenced in Finding No. LIV issued an order, pursuant to a stipulation executed by Respondent, providing that:

- A. Respondent admits to having violated provisions of Hawaiian law relative to advertising and representing himself to be a certified public accountant without possessing the required Hawaii license, registration or certification.
- B. Respondent is enjoined from acting as a certified public accountant unless and until he acquires a valid and current Hawaii license, registration or certificate.
- C. Respondent shall pay the Hawaii Department of Commerce and Consumer Affairs, Compliance Resolution Fund, a civil penalty in the sum of \$500.00.

LVI

On January 18, 1991, Respondent paid the civil penalty as set forth in Finding No. LV.C.

LVII

Respondent, in 1992, moved from Hawaii to Nevada.

LVIII

Respondent, residing in Nevada as referenced in Finding No. LVII, prepared and used letterhead identifying himself as a certified public accountant with a Nevada address.

LIX

On January 17, 1996, the Nevada State Board of Accountancy advised Respondent with respect to his letterhead as referenced in Finding No. LVIII that he was violating Nevada law and to refrain from using the title or designation of "certified public accountant" unless he received a certificate as a certified public accountant in Nevada.

Probation Compliance - Audit Review

New World Escrow

LX

In late 1989, Respondent undertook an independent audit for the fiscal year ending August 31, 1989, of New World Escrow, Inc., a California corporation engaged in the escrow business and regulated by the California Department of Corporations.

LXI

Respondent, having completed his audit of New World Escrow, Inc., on November 28, 1989, failed, at all times relevant, to:

- A. Document proper planning relevant to the audit.

Respondent's submission to the Committee of his working papers, following completion of the audit, lacked documentation appropriate and sufficient to establish adequate planning in accordance with Generally Accepted Auditing Standards (hereinafter "GAAS").

- B. Document his study and evaluation of internal control.

Respondent's submission of his working papers as referenced in Finding No. LXI.A, contained a questionnaire relevant to internal control, but lacked any conclusion as to the usefulness of the information elicited. Respondent failed to either:

1. decide to ignore the system to restrict substantive tests and document his reasons for such approach, or
 2. decide, after preliminary review, to test compliance with the controls for the purpose of ascertaining, to a reasonable degree of assurance, that the controls are in use and operating as planned.
- C. Document inquiry of counsel for New World Escrow, Inc., of the existence of any claims, litigation filings and assessments.
- D. Document an evaluation of events subsequent to balance sheet date and issuance of financial statements and audit report.

- E. Meet Current Standards of Reporting by utilizing outdated formats.
- F. Document a Statement of Cash Flows.
- G. Properly document the value of marketable securities.
- H. Document required disclosures for related party transactions.
- I. Properly document loss from sale of stock.
- J. Document required disclosures for prior year adjustment.
- K. Meet reporting requirements for an escrow company audit.
- L. Exercise due professional care.

Respondent failed to follow the audit standards of field work and reporting in accordance with GAAS by failing to:

1. plan,
2. study and evaluate internal control,
3. garner or evaluate sufficient evidential matter in the form of an attorney letter and evaluation of subsequent events,
4. use a current report format, and
5. adequately present and document financial statements.

McClain Escrow

LXII

In late 1990, Respondent undertook an independent audit for the fiscal year ending October 31, 1990, of McLain Escrow, Inc., a California corporation engaged in the escrow business and regulated by the California Department of Corporations.

LXIII

Respondent, having completed his audit of McLain Escrow, Inc., on February 5, 1991, failed, at all times relevant, to:

A. Document proper planning relevant to the audit as referenced in Finding No. LXI.A.

B. Document his study and evaluation of internal control.

Respondent's submission to the Committee of his working papers, following submission of the audit, lacked documentation appropriate and sufficient to establish consideration or approaches to any review of conclusion relating to internal control.

C. Document inquiry of counsel for McLain Escrow, Inc., of the existence of any claims, litigation filings and assessments.

D. Document an evaluation of events subsequent to balance sheet date and issuance of financial statements and audit report.

E. Meet Current Standards of Reporting by utilizing outdated formats.

F. Modify the audit report for deficiencies in financial statement presentation and disclosures.

G. Present a reconciliation of net income to net cash flows on the Statement of Cash Flows.

H. Provide proper disclosure for:

1. changes in capital stock,
2. pension plans,
3. income tax relating to net operating loss carryover, and
4. prior year adjustment.

I. Meet reporting requirements for an escrow company audit.

J. Exercise due professional care.

Respondent failed to follow the audit standards of field work and reporting in accordance with GAAS by failing as referenced in Finding Nos. LXI.L.1 - LXI.L.5.

LXIV

Respondent claims:

- A. Drake (Finding Nos. XVII - XXXII) failed to provide sufficient documentation for Respondent to properly undertake his representation.
- B. DiLucca (Finding Nos. XXXIII - XL) improperly interfered with his representation of her before the IRS.
- C. The Committee failed to properly assist him in his rehabilitation by not providing adequate notice of the subject matters to be discussed at each probation appearance as referenced in Finding Nos. XLVII - XLIX).
- D. He did not violate any laws (Finding Nos. L - LIX).
- E. Employed professionally for a number of years with the Department of Corporations, the audits referenced in Finding Nos. LX - LXIII were conducted in accordance with the regulations of the Department of Corporations. Acknowledging some "carelessness" in the conduct of the audits, Respondent further claims that to the extent he was remiss it was attributable to workload, time and financial constraints and, in any event, negligible.
- F. His failure to remit timely submissions of his work as required by Probation Condition G (Finding No. XLI.D) was due to Department of Corporations' time constraints applicable to the audits undertaken and referenced in Finding Nos. LX - LXIII.

LXV

Factors concerning the credibility of evidence are contained, in part, in Evidence Code sections 412, 780, 786, 790 and 791. When applied to the evidence herein, the Administrative Law Judge concludes, on balance, that the Board has established, clearly and convincingly, Finding Nos. XV - LXIII. Respondent's claims as set forth in Finding No. LXIV are not found competent or credible.

- A. Respondent, as a result of his move to Hawaii (Finding No. XXIX), misplaced Drake's documents and, having agreed to undertake his representation, failed to properly represent Drake before the IRS.

- B. Respondent's protestation that DiLucca interfered with his representation of her interests before the IRS is specious. Having failed to file the appropriate Power of Attorney with the IRS, the IRS continued to involve DiLucca who believed she was being represented at all times relevant by Respondent, her CPA. By his conduct as referenced in Finding Nos. XXXV - XL, Respondent inexcusably abandoned DiLucca.
- C. Despite Respondent's claims as referenced in Finding No. LXIV.C, he has displayed, by his conduct as referenced in Finding Nos. XLII - LXIII, an utter contempt for the rehabilitative focus and efforts of the Board, the Committee and their respective staff. His claims are puerile efforts to shift responsibility for his behavior to the Board and demonstrate a lack of insight and rehabilitation.
- D. Respondent, leaving the State of California prior (Finding No. XXIX) to the inception of probation (Finding No. XLI) to conduct business activities outside the jurisdiction of California, but evidently appearing to maintain a residence in California to preclude the tolling of his probation period (Finding No. XLI.F), deliberately engaged in a course of conduct impeding the Board's and the Committee's efforts at rehabilitation. Expressing incredible naivete and confusion relating to his residency, Respondent failed to properly notify the Board in writing of his date of departure from the State of California to the State of Hawaii. The condition (Finding No. XLI.F) was to report changes in residency not domicile. (See In the Matter of Frazier (1991) 1 Cal. State Bar Ct. Rptr. 676.)
- E. Respondent, further displaying a lack of circumspection (Finding No. LXV.C) into his conduct as referenced in Finding Nos. L - LIX with respect to violations of the law (see In the Matter of Layton (1993) 2 Cal. State Bar Ct. Rptr. 366) acknowledges the fact of his misconduct as referenced in Finding Nos. L - LIX but not its characterization.
- F. Despite Respondent's claim that the audits referenced in Finding Nos. LX - LXIII were conducted in accordance with the regulations of the Department of Corporations lacks merit as a result of his conduct as referenced in Finding Nos. LXI and LXIII. Respondent, notwithstanding his years of licensure (Finding No. XV), and experience with

the Department of Corporations (Finding No. LXIV.E) does not appear to fully comprehend the distinction between his role as an independent auditor, GAAS and a Board licensee, and the minimal requirements of the Department of Corporations.

- G. Respondent's lack of insight is incredible and displays voids in either his training or professional education. His failure to submit papers as referenced in Finding No. LXIV.F is inexcusable in that Respondent undertook audit activities fully apprised of the requirements of his probationary license (Finding No. XLI). An inability to comply with Probation Condition G (Finding No. XLI.D) because of purported time constraints should have compelled his considered circumspection; in any event, Respondent elected to proceed with the submission of the audits without regard to Probation Condition G. (See In the Matter of Boyne (1993) 2 Cal. State Bar Ct. Rptr. 389.) Having been disciplined by the Hawaiian authorities (Finding Nos. L - LVI), Respondent repeated the same behavior in Nevada (Finding No. LVII - LIX).
- H. Respondent, by his conduct, demeanor, selective recollection and evident misrepresentation in these proceedings, has demonstrated his lack of regard for probity (Finding Nos. XLI.A, XLI.E, XLII, XLVI and L - LV). (See In the Matter of Bach (1991) 1 Cal. State Bar Ct. Rptr. 631.)

Circumstances in Mitigation

LXVI

Respondent supports his wife and family of seven children from his licensed activities.

LXVII

Respondent, unable to turn away clients, developed a successful practice involving a significantly large number of clients impacting on his ability to individually and properly attend to matters.

LXVIII

Respondent, notwithstanding some delay in effecting restitution (Finding No. XLIV), complied with the requirement for restitution as referenced in Finding No. XLI.C. (Cf. In the Matter of Morone (1990) 1 Cal. State Bar Ct. Rptr. 207.)

LXIX

Nearly seven years have elapsed since the abandonment of DiLucca as referenced in Finding Nos. XXXIII - XL.

LXX

The move from California to Hawaii (Finding No. XXIX), with a concomitant loss of an expected Hawaiian business address, inadvertently caused the misplacing of Drake's documents and Respondent's consequent inability to properly return the documents as referenced in Finding Nos. XVII - XXXII.

Circumstances in Aggravation

LXXI

Respondent lacks insight into the impropriety of his conduct (Finding No. XV - LXV) and its relation to his Board licensure. (Layton, supra.)

LXXII

Respondent has been disciplined on multiple occasions (Finding Nos. XLI and L - LIX) and violated various terms and conditions of his probation (Determination of Issues Nos. VII and VIII). (See In the Matter of Taylor (1991) 1 Cal. State Bar Ct. Rptr. 563.)

LXXIII

Respondent has demonstrated a lack of regard for the ordinary requirements imposed on him by Board licensure (Finding Nos. XV.A, XV.C, XV.E and XV.G). (Layton, supra; Boyne, supra; and Frazier, supra.)

LXXIV

Respondent abandoned a client (Finding Nos. XXXIII - XXXIX).

LXXV

Respondent has not been completely candid in these proceedings (Finding No. LXV.H). (See In the Matter of Stewart (1994) 3 Cal. State Bar Ct. Rptr. 52.)

LXXVI

Respondent is not fully rehabilitated (Finding Nos. XV - LXV, LXXI - LXXIII and LXXV).¹

COSTS FINDINGS

LXXVII

The Board has incurred \$59,282.15 as reasonable costs and fees in the investigation and prosecution of this matter.

DETERMINATION OF ISSUES

I

Cause exists to revoke or suspend the certificate of Respondent as a certified public accountant for failing to tender client records pursuant to the provisions of Business and Professions Code section 5037(b), in conjunction with Title 16, California Code of Regulations, section 68, as set forth in Finding Nos. XVII and XXXI - XXXII.

II

The American Institute of Certified Public Accountants has established a body of generally accepted auditing standards. These standards, commonly known as GAAS, are general guidelines that promote, inter alia, not only uniformity in the profession's approach to its major public responsibility--that of examining and reporting on financial statements but also provide guidance on the aims of professional competence and independence.

Respondent, notwithstanding his characterization (Finding No. LXIV.E) of his conduct with respect to the audits referenced in Finding Nos. LX and LXII, failed to meet the standards expected of a certified public accountant licensed by the Board (Finding Nos. LXI and LXIII).

Cause, accordingly, exists to revoke or suspend the certificate of Respondent as a certified public accountant for failing to conform to professional standards pursuant to the provisions of Business and Professions Code section 5062 as set forth in Finding Nos. XVII - LXIII.

¹Notwithstanding the determination that Respondent lacks sufficient character and insight to practice accountancy in California, it is abundantly clear that with the continued support of his wife, family and own efforts, he has the capacity to establish, over time, rehabilitation sufficient to compel reinstatement of his license. In this regard, Respondent is well advised to review, with his counsel, the provisions of the Business and Professions Code related to reinstatement.

III

Cause exists to revoke or suspend the certificate of Respondent as a certified public accountant for gross negligence pursuant to the provisions of Business and Professions Code section 5100(c) as set forth in Finding Nos. LX - LXIII and Determination of Issues No. II.

IV

Cause exists to revoke or suspend the certificate of Respondent as a certified public accountant for dishonesty pursuant to the provisions of Business and Professions Code section 5100(c) as set forth in Finding Nos. XLI.A, XLI.E, XLII, XLVI and L - LV.

V

Cause exists to revoke the probation of the certificate of Respondent as a certified public accountant for violating the term and condition of his probation concerning compliance with the laws pursuant to the provisions of Business and Professions Code section 5100(f) as set forth in Finding Nos. XLI.A, XLI.E, XLII, XLVI and L - LXIII.

VI

Cause does not exist to revoke the probation of the certificate of Respondent as a certified public accountant for violating the term and condition of his probation concerning submission of his quarterly reports pursuant to the provisions of Business and Professions Code section 5100(f) as set forth in Finding Nos. XLI.E and XLII - XLVII.

VII

Cause exists to revoke the probation of the certificate of Respondent as a certified public accountant for violating the term and condition of his probation concerning review of his work pursuant to the provisions of Business and Professions Code section 5100(f) as set forth in Finding Nos. XLI.D and LX - LXIII.

VIII

Cause exists to revoke the probation of the certificate of Respondent as a certified public accountant for violating the term and condition of his probation concerning notification of a change in residence pursuant to the provisions of Business and Professions Code section 5100(f) as set forth in Finding Nos. XXIX, XLI.F and LXV.D.

IX

Cause does not exist to revoke the probation of the certificate of Respondent as a certified public accountant for violating the term and condition of his probation concerning restitution payments pursuant to the provisions of Business and Professions Code section 5100(f) as set forth in Finding Nos. XLI.C, XLIV, LXIV.E and LXVIII.

X

Respondent moves that the First Amended Accusation and First Amended Petition to Revoke Probation be dismissed for want of procedural due process. His conduct as referenced in Finding Nos. XV - XXIX, XLI - LIII, LVII, LX - LXIII, LXV.C and LXV.D stymied the investigation and efforts of the Board and, despite establishing noncooperation with the Committee (Frazier, supra), and lacking competent, convincing or dispositive legal authority, precludes serious consideration of his motion; accordingly, his motion to dismiss is denied.

XI

Respondent moves that the First Amended Accusation and First Amended Petition to Revoke Probation be dismissed for laches.

The doctrine of laches "is based upon grounds of public policy, which requires for the peace of society the discouragement of stale demands." (Mackall v. Casilear (1890) 137 U.S. 556, 566.) While it is abundantly axiomatic that "a hearing must be held within a reasonable time" (Steen v. City of Los Angeles (1948) 31 Cal.2d 542, 545), no statute of limitations exists with respect to disciplinary actions undertaken by the Board and "no fixed rule exists as to the period of time which must elapse before the doctrine of laches can be appropriately applied." (Brown v. State Personnel Board (1941) 43 Cal.App.2d 70, 78.)

To prevail in the application of laches herein, Respondent must produce "sufficient evidence of prejudice to justify the dismissal of disciplinary charges against him." (Fahmy v. Medical Bd. of California (1995) 38 Cal.App.4th 810, 816.) Respondent contends that prejudice arises from the passage of time and his inability to recollect particular facts. Such contention in light of both the documentary evidence and Respondent's self-serving selective recollection is specious.

XII

Respondent produced no evidence of particular financial hardship relative to the imposition of any order for costs (see Business and Professions Code section 5107(e)).

Business and Professions Code section 5107(a) allows an administrative law judge to direct a licentiate found to have violated particular provisions of the law relating to accountancy "to pay to the board all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorneys' fees."

The Board has incurred significant costs in the investigation and prosecution of Respondent (Finding No. LXXVII). The Board disciplinary system is entitled to some relief from costs by disciplined licensees. (Cf. In the Matter of Respondent J (1993) 2 Cal. State Bar Ct. Rptr. 273, 278.)

Lacking competent evidence of Respondent's finances, cause exists to direct Respondent to pay costs in the sum of \$59,282.15 for the investigation, prosecution and enforcement of this matter pursuant to Business and Professions Code section 5107 as set forth in Finding No. LXXVII.

XIII

The objective of this proceeding is to protect the public, the profession of accountancy, maintain professional integrity, its high standards, and preserve public confidence in accountancy as a profession. These proceedings are not for the primary purpose of punishing an individual. (Camacho v. Youde (1979) 95 Cal.App.3d 161, 165.)

Licensure by the California Board of Accountancy is not readily granted. Qualification for licensure as a certified public accountant must be met (Business and Professions Code section 5080, et seq.) and minimum standards continuously satisfied (Business and Professions Code sections 5018 and 5026, et seq.). The effect of Board licensure is to assure the public that the person holding the license is qualified. This furthers the state's interest in public health, safety, morals and welfare. This, however, places a burden not merely on the Board, as an instrumentality of the state, but also the Board licensee to responsibly conduct all his affairs. In this regard it is Respondent who in the responsible conduct of his affairs furthers public confidence in licensure.

Respondent has conducted himself irresponsibly as referenced in Determination of Issues Nos. I - V and VII - VIII compelling the imposition of discipline.

The key concern in arriving at a disciplinary recommendation is the degree to which the public needs protection from Respondent. (Meopham v. State Bar (1986) 42 Cal.3d 943, 948; In the Matter of Rodriguez (1993) 2 Cal. State Bar Ct. Rptr. 480, 501.)

In exercising disciplinary authority, an Administrative Law Judge, acting on behalf of the Board, should take action that is calculated to aid in the rehabilitation of the licensee, or where, due to a lack of continuing education or other reasons, restriction on scope of practice is indicated, to order restrictions as are indicated by the evidence. Clearly, however, where rehabilitation and protection are inconsistent, protection should be paramount.

The rehabilitation of Respondent is not feasible. The evidence discloses a cavalier attitude by Respondent with respect to his obligations as a Board licensee even prior to the initial imposition of discipline (Finding Nos. XV.A, XV.C, XV.E and XV.G). The imminent imposition of discipline (Finding No. XLI) resulted in Respondent relocating his family and files to Hawaii (Finding No. XXIX) to conduct business activities, including licensed activities affecting residents of California but beyond the ordinary review of the Board (Finding No. LXV.D). While on probation to the Board (Finding No. XLI), Respondent conducted his activities with little regard to the Board (Determination of Issues Nos. VII - VIII), the public (Finding No. L - LIX) or his chosen profession (Finding No. LX - LXIII and LXV).

Character in the practice of accountancy is as important a qualification as knowledge. (Cf. Hawker v. New York (1897) 170 U.S. 189, 196; Dent v. West Virginia (1888) 129 U.S. 114, 122; DeRasmo v. Smith (1971) 15 Cal.App.3d 601, 605; Harrington v. Department of Real Estate (1989) 214 Cal.App.3d 394, 406.) Rehabilitation to protect the public mandates insight and serious efforts and compliance by Respondent (Lavton, supra). Respondent's lack of insight and serious regard for the efforts undertaken by the Board in its prior imposition of discipline (Taylor, supra) establish Respondent's lack of full rehabilitation (Finding Nos. LXV.C - LXV.H and LXXV). The risk posed by Respondent's conduct and attitude and present lack of rehabilitation compels a determination that such risk be borne solely by Respondent and not, at this time, shared with the public.

Accordingly, giving due consideration to the facts underlying the First Amended Accusation (Finding Nos. XV, XVII - LXV) and First Amended Petition to Revoke Probation (Finding Nos. XV, XLI - LXV) and the evidence of mitigation, rehabilitation or extenuation (Finding Nos. LXVI - LXX) balanced against the evidence of aggravation (Finding Nos. LXXI - LXXVI), the public interest will be adversely affected by the continued issuance by the Board of any certificate to Respondent.

ORDER

I

The probation granted on November 8, 1988, by the Board of Accountancy in In the Matter of Accusation Against: Kenneth Nelson Craig, Case No. 537, to Respondent Kenneth Nelson Craig (Certificate No. 21188E) is revoked, the stay vacated, and the order of revocation imposed forthwith pursuant to Determination of Issues Nos. VII and VIII, and each of them, and XIII.

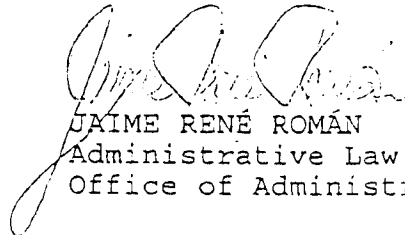
II

The Certified Public Accountant certificate of Respondent Kenneth Nelson Craig (Certificate No. 21188E) is revoked pursuant to Determination of Issues Nos. I - V, and each of them, and XIII.

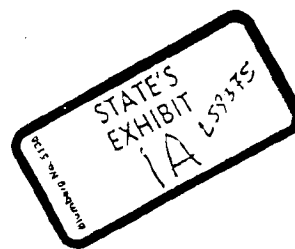
III

Respondent Kenneth Nelson Craig (Certificate No. 21188E) is ordered to reimburse the Board of Accountancy the amount of \$59,282.15 for its investigative and prosecution costs pursuant to Determination of Issues No. XII.

Dated: April 15, 1996


JAIME RENÉ ROMÁN
Administrative Law Judge
Office of Administrative Hearings

DANIEL E. LUNGREN, Attorney General
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Attorneys for Complainant

BEFORE THE
BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation
Against:

KENNETH NELSON CRAIG
P. O. Box 6697
Incline Village, Nevada 89450

Certified Public Accountant
Certificate No. 21188

Respondent.

NO. D1-86-537

FIRST SUPPLEMENT TO THE
FIRST AMENDED ACCUSATION
and
FIRST AMENDED PETITION TO
REVOKE PROBATION

Complainant Carol Sigmann, as causes for revocation of
probation and disciplinary action, alleges the following
additional matters:

36. Complainant files this first supplement to the
first amended accusation and first amended petition to revoke
probation (hereinafter collectively the "accusation") solely in
her official capacity. This supplement alleges additional
matters beyond those in the accusation previously on file, and is
incorporated into that accusation.

1 37. Updated License History. Certified Public
2 Accountant Certificate No. 21188 was most recently renewed on
3 September 11, 1995 and is renewed through July 31, 1997. It
4 remains subject to terms and conditions of probation as ordered
5 by the Board effective November 8, 1988, by virtue of conditions
6 N. and O. of the stipulated settlement, as is more fully set
7 forth herein.

8
9 STATUTES AND PROFESSIONAL STANDARDS
10

11 38. At all times material herein, the Board's
12 regulations have regulated required continuing education in
13 Section 87 et seq. which implement Code Section 5070.5. Board
14 Rule 87(a) requires that a licensee must complete at least 80
15 hours of qualifying continuing education during every two-year
16 period immediately preceding permit renewal, and that a licensee
17 may not practice without having completed the continuing
18 education. Board Rule 89(a) requires the submission of a signed
19 statement, under penalty of perjury, that all applicable
20 continuing education requirements have been met. Board Rule 89(b)
21 requires licensees to maintain their records confirming
22 attendance at and completion of continuing education, including
23 specific information set forth in the text of the rule. Board
24 Rule 89(c) provides that records required to be maintained under
25 Rule 89(b) must be maintained by each licensee for a period of 4
26 years after each renewal. Board Rule 89(d) provides that a
27 licensee's willful making of any false or misleading statement,

1 in writing, regarding his or her continuing education shall
2 constitute cause for discipline.

3 39. Board Rule 52 (formerly Board Rule 54.1) requires
4 that a licensee respond to a written Board inquiry within 30
5 days.

6
7 ADDITIONAL GROUNDS FOR VACATING THE STAY OF REVOCATION,
8 FOR REVOKING PROBATION AND FOR FURTHER DISCIPLINE OF LICENSE

9
10 VIOLATION OF NEVADA STATUTES

11
12 40. Grounds exist for vacating the stay heretofore
13 issued and reimposing the order of revocation of respondent's
14 certificate in that he failed to comply with the terms of his
15 probation as follows:

- 16 a. Respondent has failed to comply with his probationary
17 conditions requiring compliance with laws and rules
18 related to the practice of public accountancy
19 (Condition A) in that he has violated laws of the state
20 of Nevada related to unlicensed practice while on
21 probation in California, as is more fully set forth in
22 paragraph 41 below.

23 41. Respondent's probation is subject to revocation in
24 that he violated Nevada state laws related to the unlicensed
25 practice of accountancy, in violation of condition A of his
26 probation. The circumstances are that the Respondent has never
27 been licensed in the state of Nevada (reference Nevada Revised

1 Statutes 628.002 et seq., [Chapter 628], in particular NRS
2 628.370; 628.450 through 628.580; and 628.090), as follows:

3 a. The letterhead used by respondent, during a period
4 known to respondent but not known to complainant, and
5 on the dates November 23, 1992, and January 19, 1996,
6 indicates that respondent is a Certified Public
7 Accountant, with a Nevada address.

8 b. The stamp respondent used in the renewal form he
9 filed for the renewal period due July 31, 1993, reads:

10 Kenneth Nelson Craig, CPA
11 P. O. Box 6697 - 1130 Altdorf
12 Incline Village
Nevada 89450

13 This conduct violates Nevada Revised Statutes Section
14 628.450, which provides that a person "shall not assume or use
15 the title or designation 'certified public accountant' or the
16 abbreviation 'C.P.A.' or any other title, designation, words,
17 letters, abbreviation, sign, card or device tending to indicate
18 that he is a certified public accountant, unless he has received
19 a certificate as a certified public accountant under NRS 628.190
20 to 628.310 inclusive, holds a live permit, and all of his offices
21 in this (Nevada) state for the practice of public accounting are
22 maintained and registered as required under NRS 628.370."
23 Respondent is not a licensee of Nevada, nor is his office
24 registered as required.

25 42. Incorporating herein the matters charged in
26 paragraphs 40 and 41, cause for discipline has been established
27 in that the conduct described constitutes the unauthorized

1 practice of public accountancy in another state which is
2 unprofessional conduct and subject to discipline under Section
3 5100.
4
5

6 CONTINUING EDUCATION REQUIREMENTS
7

8 43. Respondent is required by virtue of Board Rules 87
9 and 89, in conjunction with Code Section 5070.6, to attest, at
10 the time of his bi-annual license renewal, to his completion of
11 80 hours of required continuing education during the preceding
12 two-year period. The licensee is required to maintain those
13 records for a period of four years. Rule 87(a) provides that a
14 licensee may not engage in public practice unless he has
15 completed the requisite continuing education.

16 44. Incorporating herein the matters alleged in
17 paragraph 43, respondent's probation is subject to revocation for
18 having insufficient continuing education for the two-year period
19 1989-1991 in that he signed a statement on his 1991 renewal form
20 that he had the required continuing education for the applicable
21 period whereas, by his own submissions in the required quarterly
22 reports, the maximum continuing education claimed is 74 hours.

23 45. Incorporating herein the matters alleged in
24 paragraph 44, respondent's probation is subject to revocation for
25 having insufficient continuing education for the two-year period
26 1991-1993 in that he signed a statement on his 1993 renewal form
27 that he had the required continuing education for the applicable

1 period whereas, by his own submissions in the required quarterly
2 reports, the continuing education claimed as of July 7, 1993, is
3 63 hours.

4 46. Incorporating herein the matters alleged in
5 paragraphs 43 through 45, respondent is subject to discipline for
6 practicing public accountancy within the meaning of Code Sections
7 5051, in violation of Code Section 5050 and Board Rule 87(a) in
8 that he falsely claimed to have the required continuing education
9 and that he was in fact practicing during two renewal periods
10 without the requisite continuing education.

11 47. On January 11, 1996, respondent was requested to
12 produce, by January 30, 1996, a listing of, and support for,
13 continuing education hours for the 1993-1995 renewal period.
14 Respondent has failed to do so.

15 48. Incorporating herein the matters alleged in
16 paragraphs 43 and 47, cause for revocation of probation is
17 established in that respondent has failed to cooperate with the
18 Board in violation of his probation (Conditions A and M) and of
19 Board Rule 52, in conjunction with Code Section 5100(f).

20 49. Incorporating herein the matters alleged in
21 paragraphs 43 and 47, cause for revocation of probation is
22 established in that respondent has failed to maintain, and to
23 produce, evidence of completion of required continuing education
24 courses in violation of Code Section 5100(f) and Board Rules 87
25 and 89 and their provisions relating to continuing education.

26 50. Incorporating herein the matters alleged in
27 paragraphs 43 and 47, cause for discipline is established in that

1 respondent has failed to respond to a written inquiry of the
2 Board in violation of Board Rule 52 in conjunction with Code
3 Section 5100(f).

4 PRAYER

5
6 WHEREFORE, complainant requests that these matters be
7 heard at the hearing on the First Amended Accusation and First
8 Amended Petition to Revoke Probation, and that, following said
9 hearing, the Board issue a decision:

10 1. Vacating the stay heretofore in effect and
11 reimposing the order of revocation on Certified Public Accountant
12 Certificate No. 21188, heretofore issued to respondent Kenneth
13 Nelson Craig or otherwise revoking or suspending said
14 Certificate;

15 2. Awarding the Board costs as provided by statute;
16 and

17 3. Taking such other and further action as the Board
18 deems proper.

19
20 DATED: March 24, 1996

21 *for* Carol Sigmann
22 Executive Officer
23 Board of Accountancy
24 Department of Consumer Affairs
State of California

Complainant

25 03541110-LA91AD2754
26
27

1 ANIEL E. LUNGREN, Attorney General
2 of the State of California
3 JEANNE COLLETTE WERNER
4 Deputy Attorney General, State Bar No. 93170
5 Department of Justice
6 2101 Webster Street, 12th Floor
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9 Attorneys for Complainant
10

11 BEFORE THE
12 BOARD OF ACCOUNTANCY
13 DEPARTMENT OF CONSUMER AFFAIRS
14 STATE OF CALIFORNIA
15

16 In the Matter of the Accusation)
17 Against:)
18)

19 KENNETH NELSON CRAIG)
20 P. O. Box 6697)
21 Incline Village, Nevada 89450)
22 Certified Public Accountant)
23 Certificate No. 21188)

24 Respondent.)
25)
26)
27)

NO. D1-86-537

FIRST AMENDED ACCUSATION
and
FIRST AMENDED PETITION TO
REVOKE PROBATION

28 Complainant Carol Sigmann, as causes for revocation of
29 probation and disciplinary action, alleges:

30 1. Complainant is the Executive Officer of the
31 California Board of Accountancy ("Board") and makes and files
32 this first amended accusation and first amended petition to
33 revoke probation (hereinafter "accusation") solely in her
34 official capacity. This accusation hereby supersedes and
35 replaces nunc pro tunc the accusation heretofore filed on January
36 18, 1993.

37 //

1 LICENSE INFORMATION, DISCIPLINARY HISTORY AND JURISDICTION

2
3 2. License History. On or about March 14, 1975,
4 Certified Public Accountant Certificate No. 21188 was issued by
5 the Board to Kenneth Nelson Craig ("respondent"). The license
6 expired on or about August 1, 1981, and was renewed on or about
7 March 15, 1986. The license was disciplined effective November
8 1988, for reasons set forth in Accusation No. 537. The parties
9 stipulated to discipline, including a five-year probation subject
10 to terms and conditions. True and correct copies of the
11 Accusation, Stipulation in Settlement and Board order are
12 attached hereto as Exhibit A and incorporated herein as though
13 fully set forth.

14 The license was most recently renewed through July 31,
15 1995 and has expired, remaining subject to terms and conditions
16 of probation as ordered by the Board effective November 8, 1988,
17 by virtue of conditions N. and O. of the stipulated settlement,
18 as is more fully set forth below.

19 3. Addresses of Record. Respondent's addresses of
20 record on file with the Board during periods relevant herein are:

- 21 a. 31822 Village Circle Road, #102
22 Westlake Village, CA 91361
23 b. 108 Ojai Avenue
24 Oxnard, CA 93035
25 c. 2622 Victoria
26 Port Heuneme, CA 93041
27 d. P. O. Box 6697
 Incline Village, Nevada 89450

1 4. Disciplinary History. Accusation No. 537 charged
2 respondent with violations of Section 5100 and Rule 60 related to
3 a limited partnership of which he was the general partner, which
4 partnership was funded by monies solicited by respondent from his
5 clients. Respondent was alleged to have failed in several
6 respects to comply with his professional and fiduciary duties
7 involving said limited partnership, including: misadvising his
8 clients about the effect the investment would have on their
9 personal tax liabilities; altering the partnership's official
10 filing, which changed the scope and capitalization of the
11 partnership; failing in his fiduciary capacity to properly
12 account for client monies to the clients/limited partners; and
13 diverting partnership funds to his own purposes.

14 Respondent was also charged with having practiced as a
15 certified public accountant from the date of his license's
16 expiration on August 1, 1981, until March 15, 1986, a violation
17 of Section 5050 of the Business and Professions Code for which he
18 was also convicted, following his plea of guilty, in case number
19 CC09063, People v. Kenneth Nelson Craig, in the Municipal Court
20 of the Malibu Judicial District, County of Los Angeles.

21 Respondent admitted the truth of the allegations in
22 Accusation No. 537.

23 5. Stipulated Settlement/Probation. The Stipulated
24 Settlement in Case No. 537 provides, in pertinent part, that
25 respondent's license be revoked, with said revocation stayed;
26 that the certificate be suspended for a period of ninety days;
27 and that respondent be placed on probation for five years on

1 terms and conditions which include:

2 A.^{1/} Respondent shall obey all federal, California, other
3 states and local laws including those rules relating to the
practice of public accountancy in California.

4 G. During the period of probation, if the respondent
5 undertakes an examination, review or compilation engagement,
the resultant financial statements and all related working
6 papers related to one sample of each of the above categories
must be submitted to and reviewed by the administrative
7 committee or their designated agent for compliance with
current professional financial reporting standards ...
before release of (sic) thereof.

8 If the financial statements do not comply with the
9 provisions of the California Code of Regulations, Title 16,
Chapter 1, sections 58-58.3, then respondent must make all
10 necessary corrections or withdraw from the engagement
without issuing a report."

11 J. Respondent shall submit quarterly reports on a form
12 provided by the Board^{2/}.

13 N. In the event respondent should leave California to
14 reside or practice outside the state, respondent must notify
the board in writing of the dates of departure and return.
Periods of residency or practice outside the state shall not
15 apply to the reduction of probationary period.

16 O. If respondent violates probation in any respect, the
board, after giving respondent notice and an opportunity to

17
18 1. For ease of reference, these letters correspond to those
used in the stipulation, paragraph 17.

19 2. Paragraph 5 on the form requires a response to three
20 questions relating to compliance with probation: (a) whether
probationer has, since the effective date of the Board probation
21 order, violated, been arrested, charged, or convicted of federal or
state statute, county or city ordinance; (b) whether probationer
22 has complied with all the laws and Board regulations pertaining to
the practice of accounting; and (c) whether probationer has
23 complied with each and every condition of the terms of probation.
Explanations are called for depending upon whether the questions
24 are answered yes or no.

25 The last paragraph on the form provides: "7. I hereby
submit this Quarterly Report of Compliance as required by the
26 California State Board of Accountancy and its order and terms of
probation thereof, and declare under penalty of perjury that
27 have read the foregoing report in its entirety and understand that
misstatements or omissions of material fact may be cause for
revocation of probation." (Emphasis supplied).

1 be heard, may revoke probation and reimpose the order of
2 revocation. If an accusation or petition to revoke
3 probation is filed against respondent during the period of
4 probation, the board shall have continuing jurisdiction
5 until the matter is final, and the period of probation shall
6 also be extended until the matter is final.

6 6. Jurisdiction - Extension of Probation. At or about
7 the time he signed the stipulated settlement, respondent's
8 address of record with the Board was 31822 Village Circle Road,
9 #102, Westlake Village, CA 91361. It was subsequently changed to
10 addresses in Oxnard and Port Heuneme, both in California, before
11 being changed to Incline Village, Nevada. At a time known to
12 respondent but not known to the complainant, respondent went to
13 Hawaii to reside and/or to practice public accountancy for
14 significant periods of time, while maintaining a California
15 address of record with the Board.

16 Respondent's decision to practice and/or to reside in
17 Hawaii extended the duration of his probation by a time period
18 known to respondent but not to the complainant. For example,
19 respondent stated at a November 1990 probation meeting that he
20 spent approximately nine months a year in Hawaii and filed Hawaii
21 income taxes. In a July, 1991, probation meeting, he said he was
22 a Hawaii resident and that he continued to spend approximately
23 three months per year in California. However, respondent did not
24 comply with the requirement in his probation, condition N, that
25 he notify the Board in writing of these or other periods which
26 would effectively extend his probation.

27 It is the Board's good faith belief that, based upon

1 respondent's assertions, he has served approximately three months
2 of probation in each of the calendar years 1989 through 1992, or
3 a total of twelve months probation. In the context of perfecting
4 the renewal of his CPA Certificate, respondent advised the Board
5 of a change of address to Incline Village, Nevada, in December,
6 1992, the effect of which is to toll his probation indefinitely
7 from that date to the present.

8
9 STATUTES AND PROFESSIONAL STANDARDS

10 7. At all times material herein, section 5100 of the
11 California Business and Professions Code (hereinafter "code") has
12 provided in pertinent part that "(a)fter notice and hearing, the
13 Board may revoke, suspend or refuse to renew any permit or
14 certificate" issued by the Board for unprofessional conduct,
15 including but not limited to:

16 5100 (c) Dishonesty, fraud, or gross negligence in the
17 practice of public accountancy.

18 5100 (f) Willful violation of the Accountancy Act or any
19 rule or regulation promulgated by the board.

20 8. Code Section 5062 provides that a licensee shall
21 issue a report which conforms to professional standards upon
22 completion of a compilation, review or audit of financial
23 statements.

24 9. Code Section 5037(b) provides that a licensee
25 shall furnish to his client or former client, upon request and
26 reasonable notice: "(2) Any accounting or other records belonging
27 to, or obtained from or on behalf of, the client which the

1 licensee removed from the client's premises or received for the
2 client's account...". The Board's regulations, codified in Title
3 16 of the California Code of Regulations, provide in Section 68
4 ("Board rule 68"): "A licensee of the board, after demand by or
5 on behalf of a client, for books, records or other data...that
6 are the client's records shall not retain such records...";

7 10. Applicable standards pertinent to this accusation
8 include, without limitation:

9 a. Statements on Auditing Standards ("SAS") codified by
10 the American Institute of Certified Public Accountants
11 (AICPA). The statements are codified by AU number. The
12 sections pertinent herein include, without limitation:
13 AU § 230; AU § 311; AU § 320 and AU § 320.51-.55;
14 AU § 329.01; AU § 339.05; AU § 337.08; AU § 230;
15 AU § 431.01-.03; AU § 508; and AU § 560.02.

16 b. Generally Accepted Accounting Principles ("GAAP"),
17 derived from various authoritative sources, including,
18 without limitation:

19 1. Statements of Financial Accounting Standards
20 ("FAS" or "FASB"), issued by the Financial
21 Accounting Standards Board (also "FASB"). The
22 statements pertinent herein include, without
23 limitation: FAS 12; FAS 16; FAS 57; FAS 87; FAS
24 95; and FAS 96.

25 2. Opinions ("APB") issued by the Accounting
26 Principles Board (also "APB", a predecessor of
27 FASB). The opinions pertinent herein include,

without limitation: APB 9, APB 12, APB 20; and
APB 30.

c. Rules of Practice before the Internal Revenue Service (IRS), contained in Title 31, Code of Federal Regulations, Part 10, (specifically, Reg. § § CFR 10.0 to 10.93), incorporated in Treasury Department Circular 230, including, without limitation, § 10.23: Prompt disposition of pending matters.^{3/}

11. Business and Professions Code Section 5107 provides for recovery by the Board of all reasonable costs of investigation and prosecution of the case, including, but not limited to, attorney's fees in specified disciplinary actions, including alleged violations of section 5100(c). A certified copy of the actual costs, or a good faith estimate of costs signed by the Executive Officer, constitute prima facie evidence of reasonable costs of investigation and prosecution of the case.

12. Pursuant to section 118(b) of the Code, the suspension, expiration, or forfeiture by operation of law of a license issued by the Board shall not during any period during which it may be renewed, restored, reissued or reinstated, deprive the Board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the

3. Section 10.23 provided, at the time pertinent herein, that no certified public accountant shall unreasonably delay the prompt disposition of any matter before the Internal Revenue Service.

1 license or otherwise taking disciplinary action against the
2 licensee on any such ground. Section 5070.6 of the Code provides
3 that an expired permit may be renewed at any time within five
4 years after its expiration upon compliance with certain
5 requirements.

6
7 GROUNDS FOR VACATING THE STAY OF REVOCATION,
8 FOR REVOKING PROBATION AND FOR FURTHER DISCIPLINE OF LICENSE

9 Probation Violations

10 13. Grounds exist for vacating the stay heretofore
11 issued and reimposing the order of revocation of respondent's
12 certificate in that he failed to comply with the terms of his
13 probation as follows:

- 14 a. Respondent has failed to comply with his probationary
15 conditions requiring compliance with laws and rules
16 related to the practice of public accountancy
17 (Condition A) with respect to each of the four matters
18 (two audits and two tax clients) charged herein, as is
19 more fully set forth in paragraphs ^{21-26, 28, 29, 3, 32-35} ~~21-35~~ below.
- 20 b. Respondent has failed to comply with his probationary
21 conditions requiring compliance with laws and rules
22 related to the practice of public accountancy
23 (Condition A) in that he has violated laws of the state
24 of Hawaii related to unlicensed practice while on
25 probation in California, as is more fully set forth in
26 paragraph 15 below.
- 27 c. Respondent has failed to comply with his probationary

1 conditions requiring compliance with laws in that he
2 filed several probationary reports with the Board which
3 were signed by respondent under penalty of perjury but
4 which contained false statements, as is more fully set
5 forth in paragraph 18 below.

6 d. Respondent issued at least two audits without having
7 submitted any audits for prior review as required by
8 Condition G of his probation.

9 e. Respondent has not notified the Board in writing of
10 periods of residency or practice outside California as
11 required by Condition N of his probation.

12 f. Respondent was frequently late in complying with
13 probationary requirements related to restitution
14 payments and the filing of quarterly reports, and was
15 incomplete and inaccurate in statements made during his
16 probationary meetings.

17 14. As a result of the conduct described in paragraph
18 13, subparagraphs a. through e. above, cause is established,
19 based on each of the allegations and on all of them, for vacating
20 the stay heretofore imposed in this case and reinstating the
21 Board's order of revocation. The matters charged in paragraph 13,
22 subparagraph f. are alleged in aggravation of penalty.

23 24 Unlicensed Practice

25 15. Respondent's probation is subject to revocation in
26 that he violated Hawaii state laws related to the unlicensed
27 practice of accountancy, in violation of condition A of his

1 probation. The circumstances are:

- 2 a. In a Complaint for Injunctive and Other Relief filed
3 June 12, 1990, in case Civil No. 90-332(3) in the
4 Second Circuit Court, State of Hawaii, State of Hawaii
5 vs. Kenneth N. Craig, respondent was charged with
6 causing to have his name and telephone number printed
7 in the GTE Yellow Pages under the listing
8 "Accountants - Certified Public". Respondent has never
9 been licensed in the state of Hawaii (reference Hawaii
10 Revised Statutes 466).
11 b. The Complaint further alleged that on or about July 25,
12 1989, respondent was advised by Hawaiian authorities to
13 refrain from advertising until he was duly licensed,
14 and that on or about April, 1990, respondent again
15 caused the yellow pages listing under the heading
16 "Accountants - Certified Public" to be published.
17 Respondent was alleged to have violated Hawaii Revised
18 Statutes Chapters 487-13 and 480-2, and Chapter 466
19 (related to accountancy).
20 c. In a Stipulated Judgment filed December 21, 1990,
21 respondent admitted that he violated Hawaii Revised
22 Statutes, Chapters 466 and 480, as specifically set
23 forth in Complaint.

24 16. Incorporating herein the matters charged in
25 paragraph 15, cause for termination of probation has been
26 established in violation of condition A.

27 17. Incorporating herein the matters charged in

1 paragraph 15, cause for discipline has been established in that
2 the conduct described is unprofessional conduct under Section
3 5100.

4 False Reports

5
6 18. Respondent falsely reported to the Board, in
7 writing and under penalty of perjury, that he had not been
8 charged with violation of state law, nor had he violated laws
9 related to the practice of public accountancy, when, in truth and
10 in fact, he had been both charged with, and had admitted, the
11 violation of statutes in the state of Hawaii related to the
12 (unlicensed) practice of public accountancy as set forth in
13 paragraph 15 above.

14 19. Incorporating by reference the facts alleged in
15 paragraphs ^{18 JNR} above, cause for revocation of respondent's probation
16 is thereby established by reason of violation of probationary
17 condition "A" (obey all laws) in that respondent was dishonest in
18 making false statements under oath in violation of Section
19 5100(c) and/or condition "J", the requirement that he submit
20 truthful quarterly reports.

21 20. Incorporating herein the matters charged in
22 paragraph 18, cause for discipline has been established in that
23 the conduct described is unprofessional conduct under Section
24 5100.

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1 only to the year ended October 31, 1990, and
2 failed to provide disclosure on the year ended
3 October 31, 1989 (reference AU 431.01-.03).

4 2. The financial statements failed to present a
5 reconciliation of net income to net cash flows
6 (reference FAS 95).

7 3. The financial statements failed to provide
8 adequate disclosure of the changes in capital
9 stock, in that changes in the number of shares of
10 equity securities was not presented (reference APB
11 12).

12 4. The financial statements included pension plan
13 expense in the statement of income, but there was
14 no disclosure regarding the pension plan in the
15 notes to the financial statements (reference FAS
16 No. 87).

17 5. The financial statements report a loss which
18 suggests that net operating losses are available
19 for carryover but contain no disclosure regarding
20 income taxes (reference FAS 96).

21 6. The Statement of Income and Retained Earnings
22 present a prior year adjustment, but do not
23 disclose the amount of related income taxes and
24 the footnotes do not provide any discussion
25 regarding the nature of this item (reference
26 FAS 16; APB 9; APB 20).

27 G. The respondent failed to exercise due professional care

1 (reference AU 230).

2 22. Incorporating by reference the facts alleged in
3 paragraph 21 above, cause for discipline exists because
4 respondent was grossly negligent in violation of Section 5100(c)
5 in that the deficiencies constitute an extreme departure from
6 applicable standards.

7 23. Incorporating by reference the facts alleged in
8 paragraphs 21, subparagraphs E and F above, cause for discipline
9 exists insofar as said conduct violates Section 5062, in that
10 respondent failed to issue a report which conforms to
11 professional standards upon completion of...(an) audit of
12 financial statements.

13 24. Incorporating by reference the facts alleged in
14 paragraph 21 above, cause for discipline exists insofar as the
15 conduct constitutes unprofessional conduct in violation of
16 Section 5100.

17
18 New World Escrow, Inc., Audit

19 25. Respondent Kenneth Nelson Craig performed an audit
20 of the New World Escrow, Inc., for the years ended August 31,
21 1988 and 1989. The audit which respondent issued for the year
22 ended 1989 contained extreme departures from applicable
23 standards, as follows:

24 A. There was no documentation in the audit working papers
25 that the audit was properly planned (reference AU
26 Sections 311, 329.01; 339.05).

27 B. There was no documentation in the audit working papers

1 of the auditor's study and evaluation of internal
2 control (reference AU Sections 320; 320.51-.55; and
3 339.05).

4 C. The auditor failed to inquire of client's lawyer
5 concerning litigation, claims, and assessments
6 (reference AU Section 337.08).

7 D. A search for subsequent events was not documented in
8 the audit working papers (reference AU Section
9 560.02).

10 E. The respondent used an outdated report format
11 (reference AU 508).

12 F. The financial statement presents a Statement of Changes
13 in Financial Position, which, at the time of issuance
14 of the financial statements, was an outdated report. A
15 Statement of Cash Flows should have been present in the
16 financial statements (reference FAS 95).

17 G. The respondent failed to modify his audit report for
18 the period ended October 31, 1990, for deficiencies in
19 the financial statement presentation and disclosures,
20 as described below:

21 1. The notes that accompanied the financial
22 statements related only to the year ended October
23 31, 1990, and failed to provide disclosure on the
24 year ended October 31, 1989 (reference
25 AU 431.01-.03).

26 2. The balance sheet improperly reports the value of
27 marketable securities at their market value which

exceeds cost (reference FAS 12).

3. The balance sheet reports "loans receivable - shareholder" in the amount of \$57,750, but the footnotes do not contain any discussion regarding this related party transaction (reference FAS 57).

4. The Statement of Earnings reports "Loss on sale of stock" in the amount of \$377 in 1989 and \$7276 in 1988, which is reported as an "extraordinary item", but the footnotes do not contain any required discussion of this item (reference APB 30).

5. The Balance Sheet reports an adjustment to Stockholders' Equity titled "Unrealized Gain" in the amount of \$27,472, but the footnotes do not provide any discussion regarding the nature of this item or the amount of related income taxes (reference FAS 16; APB 9 and APB 20).

JP Respondent failed to exercise due professional care (reference AU 230).

26. Incorporating by reference the facts alleged in paragraph 25 above, cause for discipline exists because respondent was grossly negligent in violation of Section 5100(c) in that the deficiencies constitute an extreme departure from applicable standards.

JP ~~27. Incorporating by reference the facts alleged in paragraph 25, subparagraphs E. and F. above, cause for discipline exists insofar as said conduct violates Section 5062, in that~~

1 ~~respondent failed to issue a report which conforms to~~
2 ~~professional standards upon completion of... (an) audit of~~
3 ~~financial statements.~~

4 28. Incorporating by reference the facts alleged in
5 paragraph 25 above, cause for discipline exists insofar as the
6 conduct constitutes unprofessional conduct in violation of
7 Section 5100.

8

9 Drake Matters

10 29. Respondent is subject to disciplinary action under
11 section 5100 of the code in connection with his representation of
12 John Drake in two income tax matters. The circumstances are as
13 follows:

14 A. Respondent was retained by John Drake to prepare
15 his state and federal income tax returns for the
16 year 1984. In the course of preparing the
17 returns, respondent received and kept many of Mr.
18 Drake's business and tax records.

19 B. In 1986, the Internal Revenue Service (IRS)
20 notified Mr. Drake that they were questioning the
21 claimed business expense deductions taken on the
22 return and that he had a right to explain and
23 document the expense ("audit of 1984"). Upon
24 being notified of the IRS action by Mr. Drake,
25 respondent assured Mr. Drake that he would handle
26 the matter and that Mr. Drake should refer all
27 further IRS inquiries and correspondence to

1 respondent. Respondent requested, and Mr. Drake
2 provided, a signed Power of Attorney form (IRS
3 Form 2848).

4 C. Despite these assurances, respondent took no
5 action in this matter. The IRS, assuming that Mr.
6 Drake had waived his right to contest the matter,
7 notified Mr. Drake of the assessment of an
8 additional tax of \$3,176 plus \$1,170 in interest.
9 Mr. Drake sent the IRS notice to respondent and
10 respondent again assured Mr. Drake that he would
11 handle the matter.

12 D. Respondent again took no action. The IRS assessed
13 Mr. Drake additional interest and penalty charges
14 because he had failed to pay the tax owed.

15 E. Mr. Drake had also retained respondent to prepare
16 his 1987 tax return ("1987 return"). Mr. Drake
17 delivered his 1987 business and tax records to
18 respondent.

19 F. Respondent did not prepare Mr. Drake's 1987 tax
20 return. Respondent, despite representations to
21 the contrary to Mr. Drake, failed to file for an
22 extension of time to file the return.

23 G. When Mr. Drake learned, in August of 1988, that
24 respondent had not prepared or filed the 1987
25 federal tax return and had not handled the IRS
26 audit of his 1984 return, Mr. Drake wrote
27 respondent and demanded the return of his 1984 and

1 1987 business and tax records. Respondent failed
2 to return the records until February of 1989.

3 30. Incorporating herein the matters alleged in
4 paragraph 29, respondent is subject to disciplinary action under
5 Section 5100(c) ~~in conjunction with~~ ^{REFERS TO JLR} applicable IRS regulations in
6 that his failures and conduct with respect to his client Mr.
7 Drake in the course of the audit of 1984^{JLR} and the 1987 return
8 constitute, in each instance, gross negligence.

9 31. Incorporating herein the matters alleged in
10 paragraph 29, respondent is subject to disciplinary action under
11 Section 5100 ~~in conjunction with~~ ^{REFERS TO JLR} applicable IRS regulations in
12 that his failures and conduct with respect to his client Mr.
13 Drake in the course of the audit of 1984^{JLR} and the 1987 return
14 constitute, in each instance, unprofessional conduct.

15 32. Incorporating herein the matters alleged in
16 paragraph 29, respondent is subject to disciplinary action under
17 Section 5037 and under Section 5100 in conjunction with Board
18 Rule 68 because of his failure to return client records when
19 requested.

20 DiLucca/Buddecke Matter

21 33. Respondent is subject to disciplinary action under
22 section 5100 of the code in connection with his representation of
23 Lisa Buddecke (known, at the time, as Lisa DiLucca) in an income
24 tax matter. The circumstances are as follows:

25 A. Respondent was retained by Lisa (DiLucca) Buddecke
26 to prepare her 1987 federal tax return.

27 Respondent prepared the 1987 return, which was

1 filed.

2 B. In or about July, 1989, Ms. Buddecke received
3 notice from the IRS that it intended to audit the
4 1987 return. Ms. Buddecke telephoned respondent,
5 and respondent assured Buddecke that he would
6 handle the matter for her and advised her not to
7 have any independent contact with the IRS.

8 C. In August of 1989, respondent informed Ms.
9 Buddecke that the audit was scheduled for October
10 26, 1989, and that he would represent her. He
11 requested supporting documentation from her in
12 preparation for the audit, which Ms. Buddecke sent
13 via Federal Express.

14 D. Respondent failed to appear at the scheduled audit
15 meeting. As a result, the IRS disallowed the
16 deductions, resulting in additional tax as well as
17 penalties, and Ms. Buddecke was required to retain
18 other representation for the audit.

19 34. Incorporating herein the matters alleged in
20 paragraph 29, respondent is subject to disciplinary action under
21 Section 5100(c) ~~in conjunction with~~ ^{AS TO GJK} applicable IRS regulations in
22 that his failures and conduct with respect to his client Ms.
23 Buddecke in the course of the tax audit constitute gross
24 negligence.

25 35. Incorporating herein the matters alleged in
26 paragraph 29, respondent is subject to disciplinary action under
27 Section 5100 in that his failures and conduct with respect to his

1 client Ms. Buddecke in the course of the tax audit constitute
2 unprofessional conduct.

3
4 PRAYER

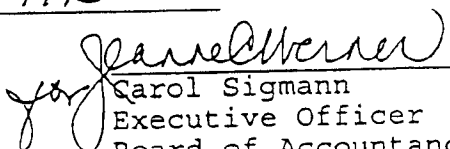
5 WHEREFORE, complainant requests that the Board hold a
6 hearing on the matters alleged herein, and that following said
7 hearing, the Board issue a decision:

8
9 1. Vacating the stay heretofore in effect and
10 reimposing the order of revocation on Certified Public Accountant
11 Certificate No. 21188E, heretofore issued to respondent Kenneth
12 Nelson Craig or otherwise revoking or suspending said
13 Certificate;

14 2. Awarding the Board costs as provided by statute;
15 and

16 3. Taking such other and further action as the Board
17 deems proper.

18
19 DATED: August 24, 1995

20 
21 Carol Sigmann
22 Executive Officer
23 Board of Accountancy
24 Department of Consumer Affairs
25 State of California

26 Complainant

27 03541110-LA91AD2754